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3729**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Application Number	09/738,024
Filing Date	December 14, 2000
First Named Inventor	Nate Mullen
Art Unit	3729
Examiner Name	Chang, Rick Kiltae
Attorney Docket Number	3768

Total Number of Pages in This Submission

15

ENCLOSURES (Check all that apply)

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Date	8/3/2004

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Typed or printed name	Jessica Mier		
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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FEE TRANSMITTAL **for FY 2004**

Effective 10/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)
165.00**Complete if Known**

Application Number	09/738,024
Filing Date	December 14, 2000
First Named Inventor	Nate Mullen
Examiner Name	Chang, Rick Kiltae
Art Unit	3729
Attorney Docket No.	3768

METHOD OF PAYMENT (check all that apply)☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit Account Number
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25-0050

YANNY & SMITH

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☒ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1)			(\$) 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20** =	X	
Multiple Dependent	-3** =	X	

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 86	2201 43	Independent claims in excess of 3
1203 290	2203 145	Multiple dependent claim, if not paid
1204 86	2204 43	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2)		

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for <i>ex parte</i> reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	165
1402 330	2402 165	Filing a brief in support of an appeal	
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

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SUBTOTAL (3) (\$)
165**SUBMITTED BY**

Name (Print/Type) Michael A. DiNardo

Registration No. (Attorney/Agent)

42,487

(Complete (if applicable))

Telephone 310-551-2966

Signature

Date 8/3/2004

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This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re U.S. Patent Application

Applicant: Nate Mullen

Serial No.: 09/738,024

Group Art Unit No.: 3729

Filed: 12/14/2000

Examiner: Chang, Rick Kiltae

For: METHOD OF WIRING LIGHTING FIXTURES TO ACHIEVE UNIFORM VOLTAGE
DROP

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

LETTER OF TRANSMITTAL

Dear Sir and/or Madam:

Please find attached herewith (1) Appellant's Appeal Brief; (2) Declaration of John Reeves in Support of Appellant's Appeal Brief; (3) Check in the amount of \$165.00; and (4) Acknowledgment Post Card. Please charge any additional fees due, or credit any overage, to Deposit Account No. 25-0050.

Respectfully submitted,

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Attorneys for Applicants

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Dated: August 3, 2004

CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that the foregoing paper is being transmitted via First Class Mail to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450 Alexandria, Virginia 22313-1450.

Date: August 3, 2004

Jessica Mier



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re U.S. Patent Application

Applicant: Nate Mullen

Serial No.: 09/738,024

Group Art Unit No.: 3729

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DROP

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P.O. Box 1450
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APPELLANT'S BRIEF

Pursuant to 37 C.F.R. § 1.192, Appellant Nate Mullen (hereinafter "Appellant") submits the following brief in support of its appeal from the decision dated January 30, 2004 of the Primary Examiner finally rejecting claims 1-11 of the instant application for Letters Patent.

Real Party in Interest

Appellant, Nate Mullen, is the real party in interest.

Related Appeals and Interferences

There are no other related appeals or interferences known to Appellant.

Status of Claims

Claims 1-17 are pending in the application. Claims 12-17 are withdrawn from consideration. Claims 1-11 stand finally rejected under 35 USC § 102(b) as anticipated by U.S. Patent No. 4,937,499 issued to Hunte (hereinafter "Hunte '499"). The appendix attached hereto contains a copy of the claims involved in this appeal.

Status of Amendments

No amendments have been filed subsequent to final rejection. Appellant did, however, file a request for an interview after the final rejection along with an Interview Agenda which the Examiner found not persuasive.

Summary of Invention

An improved wiring method used for equalizing voltage delivered to each fixture in a lighting system comprising a lighting system (10) connecting a power source to a transformer (12), with a homerun wire (14). Each of the lighting fixtures (30) are directly coupled to the homerun wire (14) without passing through another connection of fixture. The fixtures (30) are coupled to the homerun wire (14) by running wire leads (32) from the fixtures (30) to the connectors (22). The wire leads (32) are of equal lengths so that each fixture (30) is an equal distance from the transformer (12). The equal distance of each fixture (30) from the transformer (12) results in equal voltage drop between the transformer (12) to the fixture (30). The only available source of voltage drop is the electrical wire itself, the electricity to each fixture (30) does not pass through any additional connections, fixtures or other sources of voltage drop prior to arriving at the intended fixture (30). Since the only source of voltage drop is the wire itself and each fixture (30) is an equal length of wire from the transformer (12), the amount of voltage drop will be uniform.

Issues

Whether claims 1-11 are patentable under 35 U.S.C. § 102(b) over Hunte '499. More specifically whether Hunte '499 includes uniform length lead wires, an equalizer hub, and Applicant's claimed wiring configuration.

Argument

1. The Examiner's Final Rejection is Inappropriate Because the Grounds for Rejection are Unclear and Incomplete

Upon making a final rejection, the examiner must carefully consider the record and clearly develop and reiterate the grounds for rejection so that the Appellant is able to evaluate the advisability of an appeal. *MPEP* § 706.07. The Examiner may only incorporate previous Office Action statements by reference where they have been set forth in complete detail and even so, the Examiner should include a rebuttal of any arguments raised in the Appellant's reply. *Id.*

After issuing an election of species requirement in the First Office Action mailed on February 6, 2003, the Examiner rejected Appellant's election of claims 1-11 under 35 U.S.C. 102(b) as anticipated by Hunte '499 stating only the following basis for rejection in the Second Office Action mailed May 15, 2003 in reply to Appellant's election:

“Hunte discloses an electrical source (left hand side of 156 in Fig. 5), an equalizer hub (right hand side of 156 in Fig. 5), light fixtures (150a...150c) are of uniform length, a transformer (156), and Fig. 5 shows all the wiring configuration as disclosed in the claimed limitations.”
(See Office Action ¶ 6 dated May 15, 2003)

In response, Appellant traversed the Examiner's rejection arguing that Hunte '499 failed to disclose the elements of an equalizer hub, light fixtures having lead wires of uniform length and the wiring configuration disclosed in Appellant's claimed limitations. (See Response dated November 17, 2003) In addition to submitting arguments, Appellant provided the Examiner with persuasive evidence supporting its position that the right hand side of 156 Fig. 5 of Hunte '499 does not disclose Appellant's claimed equalizer hub. *Id.* at p. 2. The Examiner's reply to Appellant's arguments was a Final Rejection wherein the Detailed Action merely repeated word for word the above-referenced grounds for rejection made in the May 15, 2003 Office Action without any response to Appellant's arguments other than that they had been considered but were not persuasive. (See Office Action dated January 30, 2004)

Appellant attempted to seek clarification of the grounds for rejection by submitting a request for an Interview After Final Rejection along with an Interview Agenda. In response to Appellant's request the Examiner denied a formal interview citing to a portion of Hunte '499 not relied upon in the previous Office Actions stating it would "reasonably teach one of ordinary skill in the art the limitation 'light fixtures [having] uniform length.'" (See Interview Summary dated April 7, 2004) Furthermore, the Examiner offered a case entitled *In re Wright*, 569 F.2d 1124, in support of his assertions that Hunte '499 would teach the above-referenced limitation. *Id.*

It is well settled that a prior art reference may "reasonably teach to one of ordinary skill in the art" Appellant's invention, however, unless the Examiner establishes the prior art also discloses each element of Appellant's invention, anticipation under 35 U.S.C. § 102(b) is not established. If it is the Examiner's contention that Appellant's invention is obvious under 35 U.S.C. § 103, the Examiner must clearly state this as a basis for rejection and allow the Appellant an opportunity to respond to the rejection. Appellant is now uncertain as to whether it is Appealing a Final Rejection based solely on anticipation under 35 U.S.C. § 102(b) as recited in the previous Office Action or a newly raised grounds for rejection based on obviousness which was not asserted by the Examiner until an informal phone conversation several months after the Final Office Action was issued. Since the Examiner has failed to clearly develop the basis for rejecting the application, Appellant has not been given a full and fair opportunity to prosecute its application before the patent office. Accordingly, the Final rejection is inappropriate and Appellant should be given a reasonable opportunity to respond to the Examiner's newly raised grounds for rejection.

2. The Examiner Inappropriately Relies on *In re Wright* by Basing a 35 USC 102(b) Rejection on What the Hunte '499 Specification Would Teach One of Ordinary Skill in the Art

As previously discussed, in response to the Appellant's interview Agenda submitted

March 29, 2004, the Examiner refused a formal oral interview and submitted the following comments in the Interview Summary dated April 7, 2004:

“In combination of Figs. 4-5 and col. 5, lines 15-23 would reasonably teach one of ordinary skill in the art the limitation ‘light fixtures [having] uniform length’ presented in the interview agenda dated 3/29/2004.”

The Examiner cites to *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977), in support of its determination. In *In re Wright*, the court determined that the Solicitor’s comparison of dimensions in applicant’s drawings and prior art drawing figures wherein no reference was made in the prior art specification that the drawings were to scale was of little value. 569 F.2d at 1127. The court however found the patent suggested the desirability of a particular length in the specification therefore the length would have been obvious to one of ordinary skill in the art. *Id.*

Appellant respectfully submits that the rejection at issue in *In re Wright* was one of obviousness under 35 U.S.C. § 103. *Id.* at 1126. It was therefore appropriate for the court to consider what the prior art specification and drawings teach or suggest to one of ordinary skill in the art. In contrast, here, the ground for rejection is based on anticipatory prior art under 35 U.S.C. § 102(b). Accordingly, in order to establish anticipation, each and every element of Appellant’s invention must be found in the prior art in order for the prior art reference to serve as a basis for rejection. A mere suggestion of an element found in the specification of the prior art does not sufficiently establish anticipation under 35 U.S.C. § 102(b).

Even assuming *arguendo* that the Examiner’s reliance on the language in Column 5, lines 15-23 of Hunte ‘499 in rejecting the application under 35 U.S.C. § 102(b) is appropriate, Appellant respectfully submits Column 5, lines 15-23 neither recites nor suggests Appellant’s claimed limitation of “wire leads being of uniform length.” Instead, Column 5, lines 15-23 of Hunte ‘499 recites the following:

The reflector 148 has an outer concave reflective surface 148a and three centrally located apertures, one shown at 148b, through which extend three incandescent light bulbs 150. The light bulbs are in turn releasably held in fixtures 151 mounted on a main circuit board 152. The circuit board 152 contains switching circuitry, and a light sensor 156 which is mounted on a sub-circuit board 154 adjacent to the main circuit board 152 and through an aperture 112g in housing 112.

Column 5, lines 15-23 of Hunte '499 does not make any reference to the wires associated with the light fixtures 150a...150c, much less a desirable length for the wires. Appellant fails to see, and the Examiner has not offered any explanation, as to how this excerpt of the Hunte '499 specification teaches the limitation found in Claim 11 of the Application of "wire leads being of uniform length". Accordingly, the Examiner has misapplied the law and incorrectly relied on the *In re Wright* case in support of its rejection under 35 U.S.C. § 102(b).

3. Hunte '499 Does Not Disclose or Suggest All the Claimed Limitations of The Instant Invention

Anticipation under 35 USC § 102(b) is only appropriate "if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Appellant respectfully submits Hunte '499 does not disclose Appellant's claimed limitations of uniform length lead wires, an equalizer hub and wiring configuration therefore a final rejection under 35 USC § 102(b) is inappropriate.

a. Appellant's Claimed Limitation of Uniform Length Lead Wires is not Found in Hunte '499

Appellant respectfully submits the Examiner misquotes the Appellant's claimed limitation found in Claim 11 of "wire leads being of uniform length" in stating that Hunte '499 discloses that the "light fixtures are of uniform length." The "uniform length" recitation by Appellant provides a

limitation on the length of Appellant's claimed wire leads, not the light fixtures themselves.

The Examiner cites to Hunte '499 elements 150a, 150b and 150c of Fig. 5 in support of his incorrect contention that Appellant's limitation of "uniform length light fixtures" are disclosed by Hunte '499. It is well settled that portions of features in drawings are not evidence of actual proportions when drawings are not to scale. *Hockerson-Halberstadt, Inc. v. Avia Group Intel.*, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000)("[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue"); See Declaration of John Reeves submitted herewith; MPEP §2125. There is no suggestion in Hunte '499 that the elements in Fig. 5 are drawn to scale, to a specific dimension, or are uniform.

Figure 5 of Hunte '499 does not provide a length restriction with respect to the light fixtures or any wires associated with the light fixtures. In contrast, wire leads of uniform length are explicitly claimed and an essential element in the present application. Appellant specifically recites in Claim 11 "said wire leads connected to one or more light fixtures, and said wire leads being of uniform length." In addition, Appellant's specification discloses that the wire leads (32) are of equal length such that each fixture (3) is an equal distance from the transformer (12). Hunte '499 does not refer to wire leads, much less the length of wire leads nor do the claims or specification recite that the light bulbs (150) are to be located a uniform distance from the transformer (156). Accordingly, Appellant's claimed limitation of "wire leads being of uniform length" is not expressly or inherently found in Hunte '499 therefore anticipation under 35 USC § 102(b) has not been established.

b. Appellant's Claimed Limitation of an Equalizer Hub is not Found in Hunte '499

The Examiner cites to the "right hand side of 156 in Fig. 5" in both the Second and Final Office Actions in support of his contention that Hunte '499 discloses an equalizer hub as claimed

by Appellant. In response to the Second Office Action, which was the first time the Examiner raised this basis for rejection, Appellant presented arguments and evidence showing that element (158) found on the "right hand side of 156 in Fig. 5" is a full bridge rectifier not an electrical connection hub designed to allow multiple connections to a single home run wire as claimed and described in Appellant's invention. (See Response dated November 14, 2003) Furthermore, if the Examiner's reference was meant to be to everything in the schematic diagram between element (156) and the light bulbs (150a, 150b, and 150c) the diagram fails to depict connecting one or more light fixtures separately to the home run wire coming from the transformer. In reply to Appellant's arguments, the Examiner merely repeats the language from the Second Office Action in the Final Office Action and states Appellant's arguments were not persuasive without offering an explanation as to why Appellant's argument was not persuasive or clarification of the exact area to which the "right hand side of 156 in Fig. 5" refers.

Although the Examiner has not clarified which element found in Hunte '499 is an equalizer hub, Appellant argues before the Board that element (158) found to the right of (156) in Fig. 5 is not an equalizer hub and further that even the combination of the elements to the right of (156) in Fig. 5 of Hunte '499 do not depict Appellant's claimed equalizer hub (20). The equalizer hub claimed in the application provides a common connection point which facilitates the addition and/or removal of light fixtures without disrupting the uniformity in voltage to other light fixtures. Each light fixture (30) is directly coupled to a home run wire (14) without passing through another connection or fixture by running wire leads (32) from the fixtures (30) to connectors (22) found in the equalizer hub (20). (Specification, page 6, lines 9-15).

In contrast, the right side of Fig. 5 of Hunte '499 depicts a control circuit (154) which monitors the ambient light intensity by switching on the light fixtures 150a, 150b and 150c when the light intensity falls below a threshold level however does not facilitate the addition and/or

removal of the light fixtures without disrupting the uniformity in voltage to other light fixtures. (Specification, Col. 5, lines 57-60). In order to achieve this, the signal traveling between the transformer (156) and the light fixtures (150a, 150b and 150c) in Fig. 5 passes through several points throughout the circuit before being received by the terminal conductors for the light fixtures (150a, 150b and 150c). Specifically, power received through the step-down transformer (156) first passes through the full bridge rectifier (158) the rectified signal is further smoothed by a capacitor (160) the signal then passes through the circuit to a voltage divider and resistors, one of which (175) is ultimately “joined to a Darlington driver transistor (182) and a bias resistor (183). The collector of driver transistor (182) is coupled to a conductor (186) which forms the terminal conductors for the three incandescent lights 150a, 150b and 150c.” (Specification, Col. 5, lines 25-50, 51-55). Certainly, the above disclosed elements to the right of (156) in Fig. 5 do not provide for a direct connection between the light fixtures (150a, 150b and 150c) and a common connection point which facilitates the addition and/or removal of light fixtures without disrupting the uniformity in voltage to other light fixtures. Accordingly, the “right hand side of (156) in Fig. 5” is not the same element as Appellant’s claimed equalizer hub.

c. Appellant’s Claimed Wiring Configuration is not Found in Hunte ‘499

As discussed above, the right side of Fig. 5 depicts each of the light fixtures (150a, 150b and 150c) sharing the same leads running from the power source and shows many electrical connections between the power source and the light fixtures (150a, 150b and 150c). In contrast to the multiple electrical connections between the power source and the light fixtures disclosed in Hunte ‘499, Appellant’s invention teaches light fixtures directly coupled to the home run wire without intervening connections. Even one such additional connection teaches away from the instant invention therefore Appellant’s claimed wiring configuration is not disclosed by Hunte ‘499.

Conclusion

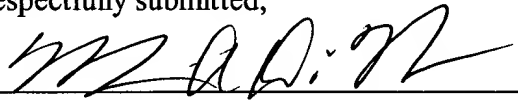
For the foregoing reasons, it is submitted that claims 1-11 of the instant application are patentable over Hunte '499. Therefore, Appellant respectfully solicits the Board to reverse the decision of the Primary Examiner finally rejecting claims 1-11 and direct the Examiner to pass the application to issue.

Fee Calculation

A check in the amount of \$165.00 is enclosed to cover the fee for filing Appellant's brief in support of appeal. Please charge any additional fees required or credit any excess fee paid to Deposit Account No. 25-0050.

Respectfully submitted,

Dated: August 3, 2004



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